

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

2013 NOV -4 PM 4:19

CLERK OF DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY

DEPUTY

JONATHAN COON,

PLAINTIFF,

V.

REVEAL LABS, INC., A DELAWARE
CORPORATION, AND NICHOLAS
EVANS, A CALIFORNIA RESIDENT,
DEFENDANTS.

§
§
§
§
§
§
§
§
§

CIVIL NO. A-13-CV-667-LY

ORDER ON REPORT AND RECOMMENDATION

Before the court are Defendants Reveal Labs, Inc. and Nicholas Evans's Motion to Dismiss for Lack of Personal Jurisdiction and Venue Pursuant to Fed. R. Civ. P. 12(b)(2) and (3) or, in the Alternative, to Transfer Venue to the Northern District of California (28 U.S.C. § 1404) or Dismiss Second and Third Causes of Action Pursuant to Fed. R. Civ. P. 12(b)(6) filed August 30, 2013 (Doc. #14); Plaintiff's Opposition to Defendants' Motion to Dismiss for Lack of Personal Jurisdiction and Venue; or for Transfer of Venue; or for Dismissal of Second and Third Causes of Action filed September 13, 2013 (Doc. #18); and Reply in Support of Defendants' Motion to Dismiss for Lack of Personal Jurisdiction and Venue; or for Transfer of Venue; or for Dismissal of Second and Third Causes of Action filed September 20, 2013 (Doc. #27). The motion, response, and reply were referred to the Magistrate Judge for a Report and Recommendation as to the merits pursuant to 28 U.S.C. § 636(b), Rule 72 of the Federal Rules of Civil Procedure, and Rule 1(d) of Appendix C of the Local Rules of the United States District Court for the Western District of Texas. The Magistrate Judge filed his Report and Recommendation on October 17, 2012 (Doc.#35), recommending that this court grant in part Defendants' motion and transfer the action to the United States District Court for the Northern District of California and deny all other requested relief.

Pursuant to 28 U.S.C. § 636(b) and Rule 72(b) of the Federal Rules of Civil Procedure, a party may serve and file specific, written objections to the proposed findings and recommendations of the Magistrate Judge within 14 days after being served with a copy of the Report and Recommendation, and thereby secure a *de novo* review by the district court. A party's failure to timely file written objections to the proposed findings, conclusions, and recommendation in a Report and Recommendation bars that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. *See Douglass v. United Services Auto Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (*en banc*).


The parties in this cause were properly notified of the consequences of a failure to file objections. On October 28, 2013, Plaintiff filed a Notice of No Objection to Magistrate's Report and Recommendation and Request for Immediate Transfer to the Northern District of California (Doc. #36). On that same date, Defendants filed Defendants Reveal Labs, Inc. and Nicholas Evans's Joinder in Plaintiff Jonathan Coon's Notice of No Objection to Magistrate's Report and Recommendation and Request for Immediate Transfer to the Northern District of California (Doc. #37). The court, having reviewed the entire record and finding no plain error, accepts the report and recommendation filed in this cause.

IT IS THEREFORE ORDERED that the United States Magistrate Judge's Report and Recommendation (Doc. #35) filed in this cause is hereby **APPROVED** and **ACCEPTED** as set forth herein.

IT IS FURTHER ORDERED that Defendants Reveal Labs, Inc. and Nicholas Evans's Motion to Dismiss for Lack of Personal Jurisdiction and Venue Pursuant to Fed. R. Civ. P. 12(b)(2) and (3) or, in the Alternative, to Transfer Venue to the Northern District of California (28 U.S.C.

§ 1404) or Dismiss Second and Third Causes of Action Pursuant to Fed. R. Civ. P. 12(b)(6) filed August 30, 2013 (Doc. #14) is **GRANTED IN PART AS FOLLOWS**: the above-styled cause of action is **TRANSFERRED** to the United States District Court for the Northern District of California. In all other respects, the motion is denied.

SIGNED this 4th day of November, 2013.



LEE Y. AKEL
UNITED STATES DISTRICT JUDGE